

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:)	
)	
A&R CHAVIRA, LLC,)	Case Number 23-30067-hcm
)	
)	
)	
Debtor,)	Chapter 11

**MOTION OF VEHICLE ACCEPTANCE CORPORATION FOR RELIEF FROM STAY
AGAINST PROPERTY OF THE ESTATE AND WAIVER OF 30-DAY REQUIREMENT**

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

Vehicle Acceptance Corporation (“VAC”), a secured creditor in this case, files this Motion of Vehicle Acceptance Corporation for Relief From Stay Against Property of the Estate and Waiver of 30-Day Requirement (“*Motion*”) pursuant to Section 362(d) of the Bankruptcy Code, and in support thereof would respectfully show the Court as follows:

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within fourteen (14) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

1. A&R Chavira, LLC, the Debtor (the “*Debtor*”), filed for relief under Chapter 11 of the Bankruptcy Code on January 24, 2023.

2. VAC provides the Debtor with floor plan financing for the Debtor’s used retail and wholesale car business. The financing is evidenced by a Demand Promissory Note and Security Agreement (the “*Note*”), whereby the Debtor promised to pay VAC such amounts as are advanced together with interest. A copy of the Note is attached to this Motion, labeled Exhibit “A” and incorporated herein for all purposes.

3. The Note is secured pursuant to its terms by all of the Debtor's assets including but not limited to its machinery, equipment, furniture, vehicles, inventory, documents, accounts, chattel paper and general intangibles, all including proceeds. The collateral is described in detail in Section 1.6 of the Note. The collateral includes all vehicles and other inventory financed by VAC (the "*Purchase Money Inventory*"). VAC perfected its lien on the Floor Plan Inventory by filing a UCC-1 with the Texas Secretary of State. A true and correct copy of the UCC-1 is attached to this Motion, labeled Exhibit "B" and incorporated herein for all purposes.

4. The Note includes various covenants to protect VAC and its Purchase Money Inventory. For example, Section 5.1 of the Note prohibits the Debtor from attempting to or actually selling or otherwise disposing of the Purchase Money Inventory or removing it from the Debtor's premises for a period exceeding twenty-four hours.

5. As of the bankruptcy filing date VAC's Purchase Money Inventory consisted of 33 vehicles as described on the summary, a copy of which is attached to this Motion, labeled Exhibit "C" and incorporated herein for all purposes. The total amount due to VAC as of February 17, 2023 was \$367,780.73.

6. VAC seeks relief from the automatic stay pursuant to Bankruptcy Code Section 362(d)(1) for cause. VAC would show that in an audit conducted in January, 2023 two vehicles including in the Purchase Money Inventory were not located at the Debtor's premises. Upon information and belief the two vehicles may have been sold out of trust. In reviewing the Schedules and upon information and belief, it appears 6 or 7 vehicles may have been sold out of trust. VAC would note that a similarly situated creditor (NextGear Capital, Inc.) has alleged several vehicles it financed were sold out of trust. Further, one vehicle was sold but VAC was not paid as a check was returned for insufficient funds. Finally, although it has loans outstanding on 33 vehicles VAC was not listed in the Debtor's creditor matrix. VAC asserts the unaccounted for vehicles (for at least two creditors) and conduct gives rise to cause for relief from stay.

7. In addition, the Purchase Money Inventory is depreciating in value and VAC is not receiving the curtailment and other fees required by the Note.

8. Alternatively, VAC is entitled to relief from stay pursuant to Bankruptcy Code Section 362(d)(2). VAC will show the Debtor does not have equity in VAC's collateral. The Debtor's Schedules value VAC's collateral at \$358,423.00, however Exhibit "A" to the Schedules indicates the "Est ACV" is \$194,500. The Debtor's Schedules list total assets of \$468,396.00 and total secured debt of \$1,014,602. As VAC only holds a first lien on its Purchase Money Inventory it appears very likely there is no equity in its collateral. Once it is established a debtor has no equity in the subject collateral, the burden shifts to the debtor to prove that there is a reasonable possibility of a successful reorganization within a reasonable time. *In re Timbers of Inwood Forest Associates, Ltd.*, 808 F.2d 363, 370-71 (5th Cir. 1987). As several vehicles pledged to multiple creditors may have been sold out of trust there is not a reasonable likelihood of a successful reorganization.

9. VAC waives the holding of a hearing within thirty (30) days and request a hearing in El Paso, Texas.

10. A proposed Order is attached.

WHEREFORE, Vehicle Acceptance Corporation seek immediate relief from the automatic stay as to its collateral (including the Purchase Money Inventory), and such other and further relief to which it is entitled.

Respectfully submitted,

KEMP SMITH LLP
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El Paso, Texas 79999-2800
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915.546.5360 (FAX)
Attorneys for Vehicle Acceptance Corporation

By: /s/ James W. Brewer
James W. Brewer
State Bar No. 02965200
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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2023, a true and correct copy of this Motion was delivered; 1) by first class U.S. Mail to the parties on the attached list, and 2) by ECF to all persons and electronically to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/ James W. Brewer

James W. Brewer

Label Matrix for local noticing
0542-3
Case 23-30067-hcm
Western District of Texas
El Paso
Mon Feb 20 09:16:27 CST 2023

A&R Chavira, LLC
6900 Gateway Blvd. East
El Paso, TX 79915-1105

U.S. BANKRUPTCY COURT
511 E. San Antonio Ave., Rm. 444
EL PASO, TX 79901-2417

(p)LINEBARGER GOGGAN BLAIR & SAMPSON LLP
ATTN DON STECKER
112 E PECAN
SUITE 2200
SAN ANTONIO TX 78205-1588

City of El Paso
c/o Don Stecker
Weston Centre, 112 E. Pecan St., Ste. 22
San Antonio, TX 78205-1512

Internal Revenue Service (IRS)
Centralized Insolvency Office
P. O. Box 7346
Philadelphia, PA 19101-7346

Libertas Funding, LLC
411 West Putnam Ave
Suite 220
Taftville, CT 06380

NextGear Capital, Inc.
c/o Christopher V. Arisco
Padfield & Stout, LLP
420 Throckmorton Street, Suite 1210
Fort Worth, Texas 76102-3792

Suncoast Funding
141 NE 3rd Avenue
Suite 100
Miami, FL 33132-2207

(p)TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
REVENUE ACCOUNTING DIV - BANKRUPTCY SECTION
PO BOX 13528
AUSTIN TX 78711-3528

Texas Workforce Commission
TWC Building - Regulatory Integrity Divi
101 East 15th Street
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Washington, DC 20530-0009

United States Attorney, Civil Process Clerk
Department of Justice
601 N. W. Loop 410, Suite 600
San Antonio, TX 78216-5512

United States Trustee - EP12
U.S. Trustee's Office
615 E. Houston, Suite 533
P.O. Box 1539
San Antonio, TX 78295-1539

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WESTLAXE FLOORING COMPANY LLC
c/o James R. Liebler, II, Esquire
Liebler, Gonzalez & Portuondo
44 West Flagler St., Suite 2500
Miami, FL 33130-1817

Carlos A. Miranda
Miranda & Maldonado, P.C.
5915 Silver Springs
Bldg. 7
El Paso, TX 79912-4126

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

City of El Paso
c/o Don Stecker
112 E. Pecan St. Suite 2200
San Antonio, TX 78205

Texas Comptroller of Public Accounts
Revenue Accounting Div - Bankruptcy Sect
P.O. Box 13528
Austin, TX 78711-3528

End of Label Matrix
Mailable recipients 16
Bypassed recipients 0
Total 16